

## Burlington Development Review Board

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[www.burlingtonvt.gov/PZ/Boards/Development-Review-Board](http://www.burlingtonvt.gov/PZ/Boards/Development-Review-Board)

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Jim Drummond  
Israel Smith (Alt.)  
Alexandra Zipparo (Alt.)



## Burlington Development Review Board

### Minutes/Findings of Fact July 1, 2014

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**In RE:** 14-1109VR; 465 Appletree Point Rd. (Ward 4, WRL) (Tax Lot No. 030-3-018-000)

**Owner/Representative:** David & Brianne Chase / Al Senecal

**Request:** Variance from front yard setback on existing vacant lot

#### **Members Present:**

Jonathan Stevens  
Michael Long  
Jim Drummond  
Brad Rabinowitz  
Alexandra Zipparo  
Israel Smith

#### **Evidence Presented:**

The Board examined the materials submitted in support of this request.

### **I. FINDINGS**

#### **Background Information:**

The applicant is seeking a variance from applicable front yard and waterfront setbacks on an existing vacant lot. The subject property was created in 2004 under the previous zoning and subdivision regulations. These previous regulations contained standards different from those in effect today. The front yard setback at the time was 15', and the waterfront setback was 50'. Today's front yard setback is based on the average of neighboring properties (in this case 84' +/- 5'), and the waterfront setback is 75'. The requested variance seeks a 25' front yard setback (~17' from the road's edge) and a 20' waterfront setback.

Written public comment has been submitted that asserts the property owners were aware of the waterfront setback restrictions at the time of subdivision under the prior subdivision regulations and should not be granted relief from this setback by way of variance. Indeed, there was a 50' waterfront setback in place at the time of subdivision as noted above. However, as noted in these findings, the variance from the waterfront setback is unnecessary and unwarranted.

No development is included in this application. The variance is sought as a precursor to a potential single family home to be filed under separate permit if the variance is granted.

Previous zoning actions for this property are as follows:

- 7/26/04, Approval of 2-lot subdivision

## **Article 12: Variances and Appeals**

### **Sec. 12.1.1 Variances**

*(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.*

The lot is not especially small at 13,240 sf, nor is it particularly irregular. The problem stems entirely from the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based on the average of 395 Appletree Point Rd and 451 Appletree Point Rd to the east. The two lots to the west are vacant. The application indicates an applicable front yard setback of 100'. Staff measurements based on boundary surveys of both 395 and 451 Appletree Point Rd show an applicable setback of 84', +/- 5' ( $106' + 62' / 2 = 84'$ ). This discrepancy needs to be resolved. In any event, an 84' front yard setback puts any potential construction either in the lake or on the lakeshore slope immediately adjacent to the water. Compliance with the front yard setback is impossible.

**(Affirmative finding as conditioned)**

The requested variance from the 75' waterfront setback is unnecessary. While the 75' waterfront setback overlaps substantially with the 84' front yard setback, the waterfront setback is considerably more flexible. Sec. 4.4.5, *Residential Districts*, (d) 1, B, *Encroachments into the Waterfront Setback*, (ii) allows the waterfront setback to be reduced to the average setback of existing structures within 150' of the subject lot. In this case, the abutting property at 451 Appletree Point Rd is within 150' and contains an existing camp structure at just 17' from the waterfront. The requested 20' waterfront setback is compliant with this standard. No variance is needed. **(Adverse finding)**

*(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.*

As noted above, an 84' front yard setback places any would-be construction in the lake or on the slope immediately adjacent to the lake. Compliance with the front yard setback is impossible.

**(Affirmative finding)**

As noted above, no variance from the waterfront setback is necessary. The provisions of Sec. 4.4.5 allow encroachments up to 17' in this case. The requested 20' waterfront setback requires no variance. **(Adverse finding)**

*(c) The unnecessary hardship has not been created by the applicant.*

The hardship relative to the front yard setback is related to the difference between the pre-existing lot and the setbacks in effect at the time it was created and the present setback requirements. It is not a lot newly created by the applicant under the current regulations.

**(Affirmative finding)**

There is no unnecessary hardship relative to the waterfront setback. **(Adverse finding)**

*(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*

The variance from the requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance would enable the construction of a single family home on a ~1/4 acre lot. Such is the predominant development pattern in this area of the city. **(Affirmative finding)**

The variance from the waterfront setback is unnecessary as noted before. **(Adverse finding)**

*(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.*

The requested 25' front yard setback allows for a reasonable building envelope and continues to reflect the neighborhood pattern of homes set relatively far back from the road and relatively close to the shoreline. **(Affirmative finding)**

No variance from the waterfront setback is necessary. **(Adverse finding)**

*(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.*

If granted, the variance from the front yard setback requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single family home. **(Affirmative finding)**

If granted, the variance from the waterfront setback would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The requested building envelope complies with the encroachment provisions for the waterfront setback. As such, no variance is needed. **(Adverse finding)**

## **II. MINUTES**

The meeting minutes will be distributed separately upon review and approval by the Development Review Board.

### **III. MOTION**

#### **Motion: Brad Rabinowitz**

I move that the Board grant Variance approval for the front yard setback for the property at 465 Appletree Point Road in the WRL zone in accordance with Article 12. Approval is subject to the following conditions:

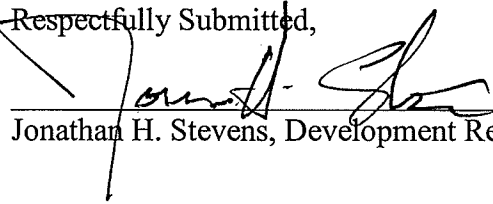
1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*. No variance is granted for the waterfront setback.
2. Prior to permit application for construction on the property, the front yard setback shall be verified, subject to staff review and approval.
3. No development is included in this approval. All development is subject to a separate zoning permit.
4. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

**Seconded: Jonathan Stevens**

**Vote: 6-0-0, motion carried**

Dated at Burlington, Vermont, this 1<sup>st</sup> day of July, 2014

Respectfully Submitted,



Jonathan H. Stevens, Development Review Board Vice Chair

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**Please note that an interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. (Zoning Ordinance Article 17, Section 17.1.7, Appeals of Development Review Board Decisions: An interested person may appeal a decision of the Development Review Board to the Vermont Superior Court Environmental Division. The appeal shall be taken in such a manner as the supreme court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3). The Court rules may require that such an appeal be commenced within Thirty (30) days of the Board's decision.**